

ADVISORY

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The Job Creation Law & Highlighted Changes to The Manpower Law

The highly anticipated Law No. 11 of 2020 on Job Creation ("Job Creation Law") (or widely known as the Omnibus Law) was enacted on 2 November 2020. The Job Creation Law amends various regulations, including Law No. 13 of 2003 on Manpower ("Manpower Law"). The series of M&T Advisory will also provide insight of the highlighted changes to the Manpower Law due to the issuance of the Job Creation law.

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Introduction

On 5 October 2020, the House of Representatives and the Indonesian Government passed the Omnibus Law Bill which has been enacted as Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"). Almost 30 days after being passed, on 2 November 2020, the Indonesian President signed the draft bill. The Job Creation Law amends (with the intention of simplifying) various regulations on licensing procedures, investment requirements, manpower, immigration, export-import requirements, land procurement and special economic zones, with the main focus being on creating jobs.

Principal changes to the Manpower Law

Whilst the Job Creation Law impacts upon a number of employment areas, including social security, immigration and migrant workers, in this M&T Advisory, we highlight and summarize the important employment-related changes made by the Job Creation Law to Law No. 13 of 2003 on Manpower ("**Manpower Law**"). These changes are noted below in table format.

Topic	Issues	Manpower Law	Job Creation Law
Foreign Manpower	Obligation to have a Ratification of Foreign Manpower Utilization Plan and its exemptions	<p>All employers employing foreign manpower must have a written permit from the Minister or the appointed official <u>except</u> for:</p> <ul style="list-style-type: none"> a. government institutions; b. international organizations; c. and foreign state missions. 	<p>All employers which employ foreign manpower must have a Ratification of Foreign Manpower Utilization Plan (RPTKA) <u>except</u> for:</p> <ul style="list-style-type: none"> a. members of the Board of Directors or Board of Commissioners who own a certain percentage of shares in the company; b. diplomatic and consular staff of a foreign state mission; and c. foreign manpower required for a production process which has halted due to an emergency situation, vocational programs, technology-based start-up companies, business meetings or research for a certain time. <p>It seems that the Job Creation Law tries to simplify the permit required for a foreign national to work in Indonesia by removing the requirement to obtain a Notification (formerly known as a work permit or IMTA); however, it is not yet clear how exactly this provision will be implemented.</p>
	Obligation to have an understudy	Foreign employees must appoint Indonesian understudies and train them to eventually be able to replace the foreigner manpower.	Foreign employees must appoint Indonesian understudies and train them to eventually be able to replace the foreigner manpower, but the understudy requirement does not apply to certain positions (without specifying the certain positions). An implementing

			regulation may be issued on the positions that do not require understudies.
Fixed Term Employment	Term of a fixed term employment contract	<p>A fixed term contract may only be made for a specific job which, according to its type or nature or activity will finish within a certain period of time, that is:</p> <ul style="list-style-type: none"> a. a job which is completed once, or a temporary job; b. a job that it is estimated to be completed in a short time and at the longest within three years; c. a job which is seasonal in character; or d. a job which is related to a new product, new activity, or additional product which is still in the experimental stage or on trial. <p>A contract can be entered into was up to two years, extendable once for one more year, and then renewable once for up to two years.</p>	<p>A fixed term contract may only be made for a specific job which, according to its type or nature or activity will finish within a certain period of time, that is:</p> <ul style="list-style-type: none"> a. a job which is completed once, or a temporary job; b. a job that it is estimated to be completed in a short time; c. a job which is seasonal in character; d. a job which is related to a new product, new activity, or additional product which is still in the experimental stage or on trial; or e. a job with an activity which kinds or characters is non-fixed. <p>The Job Creation Law revokes the provisions on the term of a contract, its extension and renewal. However, it states that the term of a contract, the types and nature of the work, and limits on the extension of a fixed term contract, will be regulated further under a separate government regulation.</p>

	Termination of a fixed term contract	<p>A contract can be terminated if:</p> <ol style="list-style-type: none"> the employee passes away; the term of the employment agreement expires; there is a final and binding industrial relations dispute institution ruling; or a certain event or situation occurs as stated in the employment agreement, Company Regulations, or Collective Labor Agreement that may cause the termination of the employment relationship. 	<p>A contract can be terminated if:</p> <ol style="list-style-type: none"> the employee passes away; the term of the employment agreement expires; the completion of a job; there is a final and binding industrial relations dispute institution ruling; or a certain event or situation occurs as stated in the employment agreement, Company Regulations, or Collective Labor Agreement that may cause the termination of the employment relationship. <p>The Job Creation Law also introduces the provision that upon a fixed term contract ending due to the completion of a certain job or the expiry of its term, the employer must pay the employee compensation, the amount of which will depend on the employee's years of service, to be regulated further under a government regulation. This is not stated in the Manpower Law.</p>
Outsourcing	Types of outsourcing	<p>The Manpower Law recognized two types of outsourcing, business activity outsourcing and manpower outsourcing. Business activity outsourcing includes, among others, work that is performed separately from the core activity, in both its management and performance. Manpower outsourcing limits</p>	<p>Under the Job Creation Law, the restrictions on the activities and manpower that can be outsourced have been removed. In addition, the possible automatic transfer of employment for failure to follow the outsourcing rules no longer applies.</p> <p>According to the Job Creation</p>

		<p>the five types of work that can be outsourced to janitor/cleaning services, catering services for employees, security services, oil and mining support activities, and transportation services for employees.</p> <p>Failure to comply the outsourcing requirements may cause an automatic transfer of employment.</p>	<p>Law, a government regulation will be issued on the protection of employees performing outsourced work. Whether the current implementing regulation on outsourcing, Minister of Manpower Regulation No. 19 of 2012, will remain in effect is not clear. However, in theory, these regulations should no longer apply as they are not in line with the new provisions of the Job Creation Law. We expect that the Indonesian Government or the Ministry of Manpower will issue a regulation on this matter.</p>
Overtime	Total overtime hours	Overtime work could only be performed for up to three hours a day or up to 14 hours a week.	The Job Creation Law increases the total hours of overtime work that employees may be asked to perform. Overtime can be performed for up to four hours a day or up to 18 hours a week. According to the Job Creation Law, a government regulation on overtime pay and hours will be issued.
Minimum Wage	Government authorities to determine the minimum wage	The Manpower Law regulates that minimum wages are determined by Governors by taking into account recommendations from the provincial wage council and district heads/mayor. Further, implementing regulations of the Manpower Law state that the Governor has the authority to determine the provincial minimum wage, while the Regent determines the municipal minimum wage.	<p>The Job Creation Law changes the government officials who have the authority to determine the provincial and municipal minimum wages. Now, only the Governor can determine the provincial and municipal minimum wage, but the municipal minimum wage (if applicable) must be higher than the provincial minimum wage.</p> <p>Also, the minimum wage only applies to employees working for less than one year. We would expect a new implementing</p>

		<p>Under the current implementing regulation, the minimum wage applies for employees who work for less than one year. Those who have worked for more than one year must be paid a salary above the minimum wage.</p>	<p>regulation which revokes the current regulation on the minimum wage.</p>
<p>Termination of Employment</p>	<p>Clarification of the obligation to follow the industrial dispute proceedings during a termination of employment and its exemptions</p>	<p>Under the Manpower Law:</p> <ul style="list-style-type: none"> a. employers, employees, labor unions, and the government had to make every effort to avoid terminations of employment; b. if termination could not be avoided, the termination had to be discussed with the employee/labor union; c. if the discussions failed, the employer had to obtain a decree from the relevant industrial relations dispute authority to terminate the employment relationship. <p>Under the Manpower Law, the above does not apply in the following circumstances:</p> <ul style="list-style-type: none"> a. the employee is still on probation (as agreed); b. the employee's voluntary resignation; c. the expiry of the initial fixed term employment contract; d. the employee reaching 	<p>The Job Creation Law clarifies the procedure for the termination of employees, as follows:</p> <ul style="list-style-type: none"> a. employers, employees, labor unions, and the government must make every effort to avoid terminations of employment; b. if termination cannot be avoided, the employer must explain the ground for and purpose of the termination of his/her employment to the employee and/or labor union, and if the employee refuses to accept his/her termination, a bipartite meeting between the parties must be held to resolve the issue; c. if it fails, the termination must follow the industrial relations dispute settlement procedure. <p>The Job Creation Law clarifies that the parties must follow the industrial relations dispute settlement procedure as the previous provision in the Manpower Law had raised</p>

		<p>retirement age (under the employment agreement, Company Regulations or Collective Labor Agreement);</p> <p>e. the employee's death.</p>	<p>confusion on the procedure for obtaining a decree from the relevant industrial relations dispute authority.</p> <p>Under the Job Creation Law, the above does not apply in the following circumstances:</p> <ol style="list-style-type: none"> a. if a fixed term contract expires; b. if the employee resigns voluntarily; c. if the employee has reached retirement age (under the employment agreement, Company Regulations or Collective Labor Agreement); d. if the employee dies.
Termination grounds	<p>Under the Manpower Law, there are various termination grounds, such as due to minor violations, acquisition, reaching retirement age, detained by the authorities, etc. These are regulated under Articles 158 – 169.</p>	<p>The Job Creation Law clarifies and adopts certain provisions on most of the grounds for termination under the Manpower Law, and introduces the following new grounds (bold) for the termination of permanent employees:</p> <ol style="list-style-type: none"> a. the company is conducting a merger, consolidation, acquisition, or spin-off and the employee is not willing to continue the employment relationship or the employer is not willing to accept the employee; b. the company is taking efficiency measures whether or not followed by the closing of the company due to the company suffering losses [this is a new 	

			<p>provision];</p> <ul style="list-style-type: none">c. the company is closing down due to the company suffering losses for two consecutive years;d. the company is closing down due to force majeure;e. the company is under a delay of payment process [this is a new provision];f. the company has been declared bankrupt;g. the employee has submitted an application to terminate the employment relationship because the employer has:<ul style="list-style-type: none">• assaulted, insulted in a rude manner or threatened the employee;• persuaded and/or ordered the employee to engage in activities that contravene the prevailing laws and regulations;• failed to pay the salary that has been agreed to on time for three or more consecutive months, although the employer has paid the salary thereafter;• failed to perform its obligations as promised to the employee;• ordered the employee to perform work other
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			<p>than that agreed to;</p> <ul style="list-style-type: none"> • given him/her work that endangers the life, safety, health or morality of the employee, and the work is not covered by the employment agreement. <p>h. a decision has been issued by the industrial relations dispute settlement agency declaring that the employer is not guilty of the alleged violation above and the employer has decided to terminate the employment relationship;</p> <p>i. the employee resigns voluntarily;</p> <p>j. the employee has been absent for five or more business days without serving written notice supported by valid evidence and the employer has duly summonsed the employee twice in writing;</p> <p>k. The employee has violated the provisions of the employment agreement, Company Regulation, or Collective Labor Agreement and has been served a first, second, and third warning successively, each valid for up to six months unless otherwise stated in the employment agreement, Company Regulations, or Collective Labor Agreement;</p>
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			<ul style="list-style-type: none"> l. the employee is unable to work for six months because the employee has been detained by the authorities for alleged criminal acts; m. the employee is suffering from a prolonged illness or disability due to an occupational accident and is unable to work after more than 12 months; n. the employee has reached retirement age; o. the employees has died; p. other reasons for the termination of employment relationship may be stated in the employment agreement, Company Regulation, or Collective Labor Agreement. [this is a new provision introduced under the Job Creation Law. Employers can apparently include other reasons for termination beyond those set out in the Job Creation Law. <p>Further provisions on the procedures for the termination of employment relationship will be issued in a Government Regulation.</p>
	<p>Termination entitlement</p>	<p>Under the Manpower Law, a different severance package formula applied depending on the ground for termination.</p> <p>For example, an employee who</p>	<p>The Job Creation Law introduces a single severance package formula whatever the ground for the termination of permanent employees, whether it is for efficiency, voluntary resignation,</p>

		<p>resigned was entitled only to compensation for any untaken annual leave not forfeited, whilst a retiring employee was entitled to twice the severance pay, once the term of service recognition payment and compensation (15% of the severance pay + term of service pay and untaken annual leave not forfeited).</p>	<p>or reaching pensionable age.</p> <p>The following single severance package formula applies upon termination of employment:</p> <ul style="list-style-type: none"> a. <u>once</u> the severance pay, b. <u>once</u> the term of service recognition payment, and c. compensation for any untaken annual leave not forfeited, repatriation costs to the employee's point of hire, and any other compensation agreed to under the employment agreement, Company Regulations or Collective Labor Agreement. <p>The Job Creation Law no longer recognizes the compensation element of the severance entitlement (ie 15% of the severance pay + the term of service payment).</p> <p>The amount depends on the <u>employee's years of service</u>. According to the Job Creation Law, a government regulation will be issued on the new severance package formula.</p>
<p>Sanctions</p>	<p>New violations for which sanctions can be imposed</p>	<p>The Manpower Law provides various grounds for imposing criminal or administrative sanctions for certain violations of the Manpower Law.</p> <p>Some notable sanctions include the following:</p>	<p>The Job Creation Law adds other types of violations to those under the Manpower Law for which criminal sanctions can be imposed. Some notable new sanctions that are not imposed under the Manpower Law include the following:</p>

		<ul style="list-style-type: none"> a. an employer who fails to obtain a written permit to hire foreign employees can be sentenced to prison for from one to four years or fined from IDR100 million to IDR400 million, or both; b. an employer who fails to register company regulations despite having ten or more employees can have imposed a criminal sanction of a fine of from IDR5 million to IDR50 million. 	<ul style="list-style-type: none"> a. an employer who fails to pay severance pay and / or a term of service recognition payment and/or compensation for rights that should have been received upon a termination of employment can be sentenced to prison for from one year to four years or fined from IDR100 million to IDR400 million, or both; b. an employer who fails to provide compensation to an employee when terminating a fixed term contract can have an administrative sanction imposed on it, which will be specified in a Government Regulation.
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Conclusions

The current practice and understanding of Indonesian employment matters, as set out under the Manpower Law, have certainly been changed by relevant provisions of the Job Creation Law. Companies will now need to look into how their manpower-related actions, and in particular their termination practice and procedures, will be changed and they will also need to adjust to the Job Creation Law. However, it is likely that these adjustments may only be possible (and most likely only prudent) once the government regulations on the amended provisions of the Job Creation Law have been issued.

Until such time as this occurs, there remains some uncertainty on the effect and applicability of the manpower provisions of the Job Creation Law and how these may be viewed by the authorities prior to further clarification under relevant implementing regulations. In due course, we foresee that most employers will likely need to amend their employment contracts, as well as their Company Regulations or Collective Labor Agreement, as applicable. Acquiring knowledge now of the recent changes will be important and whilst anticipating the precise scope and extent of implementation will be difficult, care should be taken to ensure that professional guidance is obtained when dealing with manpower matters in the period prior to further and final clarification.

If you have any questions or concerns about any of the above issues, please reach out to your usual contacts at Makarim & Taira S. to obtain specific advice. This advisory is not intended to serve as and should not be relied on as legal advice or as a substitute for legal advice in individual cases.

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